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good and sufficient reason why the Declaration is necessary, and (ii) Applicant failed to provide a good and sufficient reason why the Declaration was not earlier presented. See, Advisory Action at page 2. However, in the Response with the Declaration, Applicant states, in part:

Claims 23-36 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,615,217 issued to Rosensteel et al. (hereinafter "Rosensteel") in view of U.S. Patent No. 6,842,898 issued to Carlson et al. (hereinafter "Carlson"). For the reasons set forth below, this rejection is respectfully traversed.

As evidenced by the enclosed 37 C.F.R. §1.131 declaration and attached submissions, the claimed invention (i) was conceived on or before February 1, 2001, which is prior to the earliest effective filing date of Rosensteel, i.e., prior to June 29, 2001, and (ii) was subsequently constructively reduced to practice with due diligence exercised by the inventor. Accordingly, Rosensteel is not prior art to the present application and withdrawal of the 35 U.S.C. §103(a) rejection is respectfully requested.

In view of the above, it is evident the Declaration was filed to traverse the rejection of claims 23-36 under 35 U.S.C. §103(a) by proving invention of the claimed subject matter by Applicant prior to the effective filing date of U.S. Patent No. 6,842,898 (hereinafter "Rosensteel"). Accordingly, Applicant respectfully asserts the Response filed with the Declaration satisfies element (i). In other words, the Response filed with the Declaration explicitly provided a good and sufficient reason why the Declaration is necessary.

As for element (ii), Applicant respectfully asserts the Final Office Action dated October 5, 2006 was the first Office Action to cite Rosensteel as prior art. Accordingly, the Response was the very first opportunity to present the Declaration. In other words, it is implicit from the prosecution history that no earlier opportunity

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existed to present the Declaration and thus, the Declaration was not and could not have been earlier presented.

Finally, the purpose of a 37 CFR §1.131 declaration is to overcome a prior art rejection by proving invention of the claimed subject matter by the Applicant prior to the effective date of the reference relied upon in the rejection. *See*, MPEP §715.01. A declaration under 37 CFR §1.131 may be established using any one of the three alternatives shown outlined in MPEP §715.07, III:

37 C.F.R. 1.131(b) provides three ways in which an applicant can establish prior invention of the claimed subject matter. The showing of facts must be sufficient to show:

(A) actual reduction to practice of the invention prior to the effective date of the reference; or

(B) conception of the invention prior to the effective date of the reference coupled with due diligence from prior to the reference date to a subsequent (actual) reduction to practice; or

(C) conception of the invention prior to the effective date of the reference coupled with due diligence from prior to the reference date to the filing date of the application (constructive reduction to practice).  
(emphasis added)

Each of the three alternatives presented in 37 CFR §1.131(b) are options for the Applicant to prove prior invention of the claimed subject matter. The Applicant may choose which of the three alternatives to prove. In the instant case, the Declaration is based on the third alternative of 37 CFR §1.131(b). Accordingly, the Declaration is only required to show conception of the invention prior to the effective date of Rosensteel (*i.e.*, June 29, 2001), and due diligence from prior to June 29, 2001, to the filing date of the present application (*i.e.*, October 12, 2001). Applicant acknowledges one or more submissions provided as evidence to support the

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Declaration may have included material discussing the actual reduction to practice of at least a portion of the invention. However, Applicant respectfully asserts such material (i) does not contradict the evidence used to support constructive reduction to practice of the invention<sup>1</sup>, and (ii) is irrelevant when evaluating successful constructive reduction to practice.

Accordingly, Applicant requests the Declaration be entered and acknowledged as proper, and considered by the Examiner. Further, Applicant requests the courtesy of an expedited review considering the six month period for the Applicant to respond without the application becoming abandoned expires in 13 days. All efforts to issue an action before April 4, 2007, would be much appreciated.

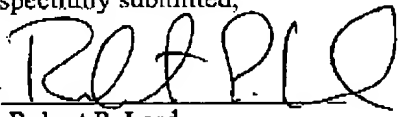
#### Conclusion

Applicant believes no fee is due with this request. However, if a fee is due, please charge our Deposit Account No. 50-0591, under Order No. 16159/098001 from which the undersigned is authorized to draw.

Dated: March 23, 2007

Respectfully submitted,

By

  
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<sup>1</sup> As each option under 37 CFR §1.131(h) is a separate way to prove prior invention, including evidence that could support one of the other options is irrelevant for the purpose of proving the chosen option of the Applicant.